



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** June 18, 2020

Staff Contact: Nicki Aaker (naaker@carson.org)

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed increase to Merck's Purchase Order (PO) from the current amount of \$44,900 to a total amount not to exceed \$60,000 for Fiscal Year 2020. (Nicki Aaker, naaker@carson.org)

Staff Summary: Carson City Health and Human Services utilizes the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) Contract # MMS15147 to purchase vaccinations and immunization supplies from Merck for vaccination efforts through Clinical Services. The contract expires June 30, 2020. This expense is funded from the Health and Human Services Private Vaccine revenue account for Fiscal Year 2020.

Agenda Action: Formal Action / Motion **Time Requested:** 5 minutes

Proposed Motion

I move to approve the Purchase Order increase as presented.

Board's Strategic Goal

Quality of Life

Previous Action

N/A

Background/Issues & Analysis

Current purchase order is in the amount of \$49,000. MMCAP Contract #MMS15147 is utilized to purchase vaccinations and immunization supplies from Merck.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 and 332.195

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Private Vaccine Account - G680020004

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Funding is provided by the Private Vaccine program income account which is revenue from patients and insurance reimbursements. Currently the balance of the program is \$50,502. If this

expenditure is approved, the Private Vaccine Program income account will be reduced by \$15,100, in order to increase the Merck purchase order.

Alternatives

Do not approve increase to Merck purchase order and provide other direction.

Attachments:

[Merck PO and invoices.pdf](#)

[Merck_MMCAp_contract_Jul15-Jun20_2020-04-20-compressed \(2\).pdf](#)

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

MERCK INVOICES		
Invoice Date	Invoice Number	Net Amount
12/09/2019	7013776578	\$ 1,068.65
11/12/2019	7013688790	\$ 4,002.25
08/22/2019	7013610344	\$ 3,271.47
08/22/2019	7013606456	\$ 8,172.15
10/08/2019	7013564018	\$ 6,129.12
10/08/2019	7013558138	\$ 4,198.70
09/09/2019	7013469169	\$ 4,198.70
09/09/2019	7013469168	\$ 2,532.01
09/09/2019	7013469167	\$ 13,101.71
	Invoices Received	\$ 46,674.76
	pending invoices	\$ 1,541.50
	pending invoices	\$ 1,010.28
	pending invoices	\$ 6,434.46
	Total Invoices	\$ 55,661.00
	PO Request	\$ 60,000.00

MMCAP Contract Number: MMS15147

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY**

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Merck Sharp & Dohme Corp., P.O. Box 4, WP97-B366, West Point, PA 19486 ("Vendor").

Pursuant to Minnesota Statutes Section 16C.03, the Commissioner of Administration may enter into this contract on behalf of MMCAP for the benefit of its members.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members' use. Participation in MMCAP is limited to government facilities such as state agencies, counties, cities, townships, and school districts, as well as other statutorily authorized facilities as defined in Section 2.8 MMCAP Participating Facilities.

The Vendor wishes to contract with MMCAP to supply products to MMCAP Participating Facilities (as defined in Section 2.8).

1 Term of Contract

1.1 Effective date: July 1, 2015, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

1.2 Expiration date: June 30, 2019, or as cancelled pursuant to clause 27. The Contract may be extended upon written mutual agreement of the parties.

1.3 Survival of Terms. The following clauses survive the expiration or cancellation of this Contract: 2.2.1.1 Claims for Loss or Damage in Shipment; 2.9 Administrative Fee and Disclosure Obligations; 2.10 Returned Goods/Credits; 2.13 Own Use; 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; 13. Default and Remedies; 15. Data Disclosure; 18. Confidential Information; 19. Exclusion; 21. Duty to Warn; and 25. Overpayments and Undercharges.

2 Contracted Pharmaceuticals

2.1 Products

2.1.1 The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP-Contracted Distributors for use by MMCAP Participating Facilities, unless provided according to the exception found in Article 2.2. The current MMCAP-Contracted Distributors are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC.

2.1.2 MMCAP reserves the right during the term of the Contract to award or dual award products that are in the best interest of the MMCAP Participating Facilities.

2.2 Product Availability.

2.2.1 Purchasing Directly from Vendor:

MMCAP agrees that Vendor may accept and fulfill direct orders from any MMCAP Participating Facility for the term of this contract; provided that, Vendor will provide to MMCAP as a supplement to the administrative fee data, a list of all MMCAP Participating Facilities that placed direct orders with Vendor pursuant to this contract during the applicable Contract Quarter.

2.2.1.1 Claims for Loss or Damage in Shipment.

Vendor agrees to address Claims for Loss or Damage in Shipment for Direct Purchases only, in accordance with Vendor's applicable published policy in effect at the time of order. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at

www.merckvaccines.com

2.2.1.2 Order Minimums.

Vendor agrees to apply Order Minimums for Direct Purchases only, in accordance with Vendor's applicable published policy in effect at the time of order. The Order Minimum in effect as of the Effective Date of this Contract is the following: Vaccine orders of less than \$600 per shipping location will be subject to a service charge of \$20. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at www.merckvaccines.com

2.2.1.3 Order Terms and Remittances.

Vendor agrees to the Order Terms and Remittances for Direct Purchases only, in accordance with Vendor's applicable published policy in effect at the time of order. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at www.merckvaccines.com

2.2.2 Purchasing through MMCAP-Contracted Distributors:

The prices for Products covered by this contract will be provided to those MMCAP-Contracted Distributors identified by MMCAP as servicing MMCAP Participating Facilities. Vendor does not establish or control the actual sale prices of Products provided to MMCAP Participating Facilities by MMCAP-Contracted Distributors. Rather, those prices are the subject of agreements between the MMCAP Participating Facilities and the MMCAP-Contracted Distributors.

Vendor anticipates that MMCAP-Contracted Distributors will request "chargebacks" to Vendor based on MMCAP Participating Facilities' purchases. With the exception of direct purchases, to enable Vendor to verify the chargebacks, MMCAP agrees to make available to Vendor, upon its request, proof acceptable to Vendor of all quantities and prices of Product purchased under this contract for the term of this contract and three months thereafter.

MMCAP will notify Vendor promptly in writing of any deletions or proposed additions to the list of MMCAP-Contracted Distributors.

Vendor will have no obligation to ship Product to any Contracted Distributors in the capacity as MMCAP-Contracted Distributors unless and until Vendor is able to reach an agreement with the Contracted Distributor that is acceptable to Vendor.

Eligible MMCAP Participating Facilities that purchase vaccines directly from Vendor pursuant to this Agreement will be eligible for a two percent (2%) prompt payment discount on invoice purchases if paid within 90 days from the date of invoice; net 91 days.

2.3 FDA-Certified Drug Application. The Vendor ("Merck" or "Vendor") acknowledges that each drug that is part of this contract has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file.

2.4 Pricing.

1) Definitions.

'Price Guarantee(s)' means that the price of a product in this contract is guaranteed for each Contract Year during the term of the Agreement. Prior to the start of each Contract Year, the vendor has the right to change the price with 30 days' prior written notice.

'Discount Guarantee(s)' means that when the Merck catalog price changes for a Product covered by this contract, the price of that Product will change, so the MMCAP Participating Facilities will receive the same percent discount off the new Merck catalog price, subject to the Vendor's right to change the discount percentage at the start of each Contract Year during the term of the Agreement, with thirty (30) days' prior written notice. For the first thirty (30) calendar days following a Merck catalog price increase, MMCAP Participating Facilities will be entitled to purchase the effected Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Participating Facility will be charged the prior (pre-increase) catalog price.

'Contract Year' shall be the period July 1, 2015, to June 30, 2016, and each subsequent 12 month period shall constitute a separate Contract Year.

'Contract Quarter' shall mean the period July 1, 2015, to September 30, 2015, and each subsequent three month period thereafter.

2) **Changes in Price.** In the event of a price and/or discount change under this contract, the Vendor shall advise the MMCAP office in writing and provide a revised Attachment A. Vendor shall have the unilateral right to increase the price or change the discount percentage for Merck Vaccines that have a Discount Guarantee or Price Guarantee as described in Section 2.4(1) upon written notice to MMCAP. Furthermore, Vendor shall have the unilateral right to decrease the price for a Merck Vaccine at any time upon prior written notice to MMCAP. Notwithstanding any other provision of this contract, Merck reserves the right to immediately adjust the discounts on Merck Products available under this contract in the event that the net effective prices available to MMCAP are forecasted by Merck to set a new Medicaid best price (if applicable), or a new Federal Supply Schedule price, or set a price lower than the price of the relevant Merck Vaccine(s) under Merck's contract with the U.S. Centers for Disease Control and Prevention ("CDC").

If there is a change in the Federal Excise Tax, the price of the Product shall automatically change as of the effective date of the change in the Federal Excise Tax, and Vendor shall notify MMCAP of such change.

3) Vendor must notify all MMCAP-Contracted Distributors of price changes within five (5) business days of notifying MMCAP.

4) In the event of any price increase, MMCAP reserves the right to obtain quotes from other manufacturers and reserves the right to award the product to the vendor with the best value to MMCAP members.

2.5 Failure to Supply Contracted Pharmaceuticals.

2.5.1 Product actually delivered to MMCAP-Contracted Distributors and MMCAP Participating Facilities shall be subject to Section 2.10 Returned Goods/Credits and Section 2.2.1.1 (Claims for Loss or Damage in Shipment), in accordance with Vendor's applicable published Merchandise for Return policy for vaccines.

2.5.2 If the Vendor assigns, discontinues, or deletes a Product from its contracted Product line during the course of this contract the Vendor must provide written notice to MMCAP. MMCAP will promptly notify MMCAP Participating Facilities. In the event of a Vendor Product recall or a court action impacting supply of Vendor Product, Vendor will conduct all Vendor Product recalls per its established procedure.

2.5.3 To receive supply status information, MMCAP may register for email alerts to receive the most current information regarding supply at: <https://www.merckvaccines.com/Order-Vaccines/Pages/supply-status.aspx>.

2.5.4 Unless otherwise indicated by the Vendor, if the Vendor discontinues or deletes a Product from its contracted Product line during the course of this contract Vendor will honor contract pricing until the inventory of the Product is depleted from the MMCAP-Contracted Distributors stock. Nothing in this contract shall be construed to limit or restrict Merck's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of any Merck Product at any time.

2.6 First DataBank, Inc. Vendor must make all contracted Products available to be included in the database of First DataBank, Inc., unless such designation is expressly waived by an MMCAP Authorized Representative.

2.7 Contract Changes.

2.7.1 Notifications.

Vendor shall advise MMCAP by notification for the following items:

- Change in Vendor's catalog price for a Product
- Change in the Price Guarantee for a Product, as set forth in the definition of a Discount Guarantee in section 2.4
- Change in the Discount Guarantee percentage for a Product, as set forth in the definition of a Discount Guarantee in section 2.4
- Increase in discount for a Product
- Removal of a Product at the NDC level.

- Change in NDC# for a Product

The contract changes above will be effective on the date set forth in the notification, and an updated Attachment A will be sent.

2.7.2 Amendments.

Vendor shall advise MMCAP by amendment for the following items:

- Addition of a Product at the NDC level

Vendor will provide to MMCAP a letter with the following elements for amendments (if applicable):

- MMCAP Contract Number
- Action (e.g., addition)
- NDC Number
- Product Description
- Packaging
- Contract Price
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's offer. A typed name, regardless of font, does not constitute a signature.

The letter shall serve as an amendment to the contract between the Vendor and MMCAP. The amendment must be accepted by MMCAP and a copy, signed by an authorized State of Minnesota representative, must be returned to Vendor at least 2 business days prior to the Amendment Effective Date. The amendment is deemed withdrawn if the Vendor does not receive an executed copy at least 2 business days prior to the Amendment Effective Date.

2.7.3 Vendor must send confirmation of fully executed Contract amendments to the MMCAP-Contracted Distributors within 5 working days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Contracted Distributors do not receive Contract amendment notification(s), Vendor agrees to honor all chargebacks at the contract price from the date indicated on the fully executed Contract amendment.

2.8 MMCAP Participating Facilities.

The Vendor must extend the contract prices to all MMCAP Participating Facilities accepted and approved by the Vendor as MMCAP Participating Facilities. The Vendor must allow qualified new state agencies and political subdivisions joining MMCAP to be added to the current participants' list of MMCAP Participating Facilities and access contract prices throughout the term of this contract subject to the eligibility requirements below. MMCAP reserves the right to add and delete other members, during the life of this contract subject to the foregoing. Notwithstanding the foregoing, in accordance with Vendor's policy, only those facilities wholly owned by the government, i.e., state, city, county, township, etc. will be eligible to participate under this contract. Other entities, such as quasi-political agencies, not-for-profit agencies and non-governmental, private or parochial schools are excluded from contract eligibility. In the event there are changes in the operation of and/or ownership of any of MMCAP Participating Facilities, MMCAP shall advise Vendor immediately.

The Vendor must submit the eligibility requirements and updated eligibility lists on a monthly basis e-mailed in an Excel spreadsheet and sent to: MMCAP.Contracts@state.mn.us.

2.9 Administrative Fee and Disclosure Obligations.

In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee at the percentage rate of 0.5% on all contract product purchases (minus any returns or credits) made by MMCAP Participating Facilities that are subject to this contract and are made through MMCAP-Contracted Distributors or directly with the Vendor. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to the administrative fee as set forth above. The administrative fee must be paid no later than 45 days after the end of the Contract Quarter. MMCAP represents that any administrative fees payable by Vendor to MMCAP will qualify as vendor fees to a Group Purchasing

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Organization as defined in Section 1128B(b) of the Social Security Act (the "Act") (42 U.S.C. 1320a-7b) and 42 C.F.R. Section 1001.952(j) subject to the safe harbor provision under 42 C.F.R. Sec. 1001.952. MMCAP represents and warrants that MMCAP is in compliance with the statute and regulations, as applicable. MMCAP represents and warrants that it will perform its obligations under or pursuant to this contract in compliance with all applicable laws including, without limitation, the federal Social Security Act and regulations thereunder relating to Medicare, Medicaid, and other Federal Health Care Programs (as defined in 42 U.S.C. Section 1320a-7b(f)). Without limiting the generality of the foregoing, MMCAP represents and warrants that it meets, and during the term of this contract will continue to meet, the definition of a "Group Purchasing Organization" under 42 CFR Section 1001.952(j), and that it is, and during the term of this contract will remain in compliance with the requirements of such regulation with respect to all payments made by Vendor to MMCAP pursuant to this contract. During the term of this contract, MMCAP must have a written agreement with each MMCAP Participating Facility that provides for either of the following: (i) The agreement states that participating vendors from which the MMCAP Participating Facility will purchase goods or services will pay a fee to the MMCAP of three (3) percent or less of the purchase price of the goods or services provided by that vendor; or (ii) In the event the fee paid to MMCAP is not fixed at three (3) percent or less of the purchase price of the goods or services, the agreement specifies the amount (or if not known, the maximum amount) MMCAP will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and MMCAP).

In addition, MMCAP represents and warrants that it will disclose at least annually to each MMCAP Participating Facility, and to the Secretary of the Department of Health and Human Services upon request, the amount of administrative fees paid to MMCAP by Vendor. Purchases by MMCAP Participating Facilities that are wholly owned by MMCAP or subsidiaries of a parent entity that wholly owns MMCAP (either directly or through another wholly owned entity) shall not be eligible for payment of administrative fees. MMCAP represents and warrants that it will accurately identify to Vendor those MMCAP facilities that are wholly owned by MMCAP or subsidiaries of a parent entity that wholly owns MMCAP (either directly or through another wholly owned entity) at the time such MMCAP facility is submitted to Vendor to be a MMCAP Participating Facility under the Contract and shall inform Vendor immediately in the event that a MMCAP Participating Facility's status changes such that it becomes wholly owned by MMCAP or a subsidiary of a parent entity that wholly owns MMCAP (either directly or through another wholly owned entity).

Purchases made by MMCAP Participating Facilities at prices mandated by the federal government or any state government or voluntarily provided to such entities at prices below mandated prices (including but not limited to purchases by Disproportionate Share Hospitals at federally mandated discounted prices or below such prices) shall not be used in the administrative fee calculation.

MMCAP and its MMCAP Participating Facilities are aware of and will comply with Section 1128B(b) of the Act (42 U.S.C. 1320a-7b) and 42 C.F.R. § 1001.952(h) and 42 C.F.R. § 1001.952(j) with respect to products supplied under this Agreement. Specifically, MMCAP and its MMCAP Participating Facilities acknowledge that the Act requires proper disclosure of any discounts, rebates, administrative fees, credits, reimbursements and other like programs provided for herein and represent and warrant that MMCAP and its MMCAP Participating Facilities will comply with such disclosure requirements.

MMCAP and its MMCAP Participating Facilities represent and warrant that they will accurately report the net effective discount price, and any other information that must be disclosed under applicable law, for each Product for which a discount has been paid under this Agreement to the U.S. Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, enrollees and other individuals to the extent required under applicable federal or state law. Without limitation of the foregoing, all discounts and other remuneration paid by Vendor under this Contract, and any other information that must be disclosed under applicable law, shall be disclosed to the Centers for Medicare and Medicaid Services ("CMS") in accordance with (i) CMS guidance (as it may be revised from time to time), (ii) any disclosure requirements in MMCAP and its MMCAP

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Participating Facilities' pharmacy contracts with Medicare Part D plans or other third parties; and (iii) any other disclosure or reporting obligations or requirements imposed by federal or state laws, regulations, or guidance. Confidential treatment shall be requested for any disclosures made to CMS and Medicare Part D Plans to the extent permitted by law.

MMCAP represents and warrants that it has informed and will continue to inform its MMCAP Participating Facilities of the disclosure obligations set forth in this Section and has provided and will continue to provide MMCAP Participating Facilities with all information necessary, including but not limited to the value of the discounts provided under this Contract, the net effective prices of the Products, and any other information that must be disclosed under applicable law, for the MMCAP Participating Facilities to comply with the reporting obligations set forth in this Section.

The Vendor must submit for each Contract Quarter, administrative fee data for both direct (sales made direct from Vendor to MMCAP Participating Facility) and indirect purchases (sales made through an MMCAP-Contracted Distributor). The quarterly administrative fee data must contain the following fields detailed below. All required administrative fee data files must be sent to: Mn.MMCAP@state.mn.us for each Contract Quarter no later than 45 days after the end of the Contract Quarter. Failure to comply with this provision may constitute breach of this contract.

Administrative Fee Report Fields (Note: if these data are not available, Vendor may leave the noted field blank):

- MMCAP Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701) – May be left blank
- MMCAP Assigned Manufacturer Number – May be left blank
- Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
- Invoice Date (Point of Sale Date) – May be left blank
- Invoice Number – May be left blank
- MMCAP Participating Facility Name
- Vendor's Account Number for the MMCAP Facility
- MMCAP Participating Facility DEA Number, if applicable
- MMCAP Participating Facility HIN Number, if applicable
- MMCAP Participating Facility Address
- MMCAP Participating Facility City
- MMCAP Participating Facility State
- Product's NDC (Use all 11 digits (00076888888))
- Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- Credit Indicator (C = credit) – May be left blank
- Contracted Units (The number of units purchased on contract.)
- MMCAP Contracted Unit Price
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars.)

Upon request, MMCAP will provide to Vendor the following data:

- MMCAP Participating Facilities' purchases through MMCAP-Contracted Distributors for all vaccines under any MMCAP contract

To the extent administrative fees are erroneously paid by Vendor, MMCAP shall immediately refund such administrative fees to Vendor. A request by MMCAP to reconcile administrative fee calculations must be made within ninety (90) calendar days after receipt of original administrative fee payment. Items in dispute must be clearly identified and accompanied by documentation to support the request for review.

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2.10 Returned Goods/Credits. Vendor agrees to accept the return of Products in accordance with Vendor's applicable published policy in effect at the time of order, provided, however, that Vendor agrees to accept the return of products delivered by Vendor in error without charge and for full credit. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at www.merckvaccines.com

2.11 Value-Added Programs. Deleted in its entirety.

2.12 DEA Number and HIN Numbers. Unless the MMCAP Participating Facility purchases controlled substances, the Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from MMCAP Participating Facilities. Even if a DEA number is not required, MMCAP agrees that the receiving facility for an MMCAP Participating Facility must be in compliance with state and federal licensing requirements authorizing the handling of vaccines.

MMCAP hereby consents to release its Drug Enforcement Administration (DEA) registration number(s) to Merck & Co., Inc. and to MMCAP-Contracted Distributors in order to administer this Agreement and for Merck Sharp & Dohme Corp. to release its DEA registration number(s) to MMCAP-Contracted Distributors in order to administer this Agreement.

2.13 Own Use. No MMCAP Participating Facility shall purchase any Merck Product under this Agreement except Merck Product for the institution's "own use" in accordance with *Abbott Laboratories v. Portland Retail Druggists Association*, 425 U.S. 1 (1976) and will not be resold by a MMCAP Participating Facility. If Merck Product purchased under this Agreement is not dispensed consistent with this Section 2.13, such MMCAP Participating Facility will provide Merck with an accounting for all such dispensing and shall return all discounts attributable to such dispensing to Merck. Such accounting shall be made and return of discounts paid prior to the end of the month following any purchases not for "own use." For any violation of this "own use" provision Merck may exclude such MMCAP Participating Facility from participation in this Agreement. Return of discounts is a non-exclusive remedy for violation of this "own use" provision and supplements other available legal and equitable remedies to which Merck may be entitled. Notwithstanding institution's "own use" policies, Merck Products purchased at a discount under this Agreement may not be transferred to entities that are not MMCAP Participating Facilities under this Agreement. This own use clause shall be interpreted as narrowing, not expanding, the permitted uses of Merck Product under this Agreement.

MMCAP Participating Facilities are on notice of restrictions on the resale of prescription pharmaceutical products (including vaccines) imposed by law, including without limitation the Prescription Drug Marketing Act, and especially 21 U.S.C. § 353(c).

2.14 Product Dating. All Products supplied must be usable on the date received by the MMCAP Participating Facility.

2.15 Deleted in its Entirety.

2.16 Customer Service.

2.16.1 Primary Account Representative. Vendor will assign a Primary Account Representative to MMCAP for this Contract and must provide notice to MMCAP if that person is reassigned. The Primary Account Representative will be responsible for:

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.16.2

In the event that the Primary Account Representative is unresponsive and does not meet MMCAP's needs, the Vendor will assign another Primary Account Representative upon MMCAP's request.

2.16.2. Business Reviews. Vendor will perform at least one business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor and will include a review of sales to members,

pricing and contract terms, administrative fees, supply issues, outstanding contract issues, wholesaler and customer issues, as well as any other mutually agreed upon topics.

3 Authorized Agent. MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155. The Vendor's Authorized Agent is the appropriate Public Sector Customer Manager, P.O. Box 4, WP97B-366, West Point, PA 19846.

Merck Vaccine Specialists and other field representatives are available to MMCAP Participating Facilities' healthcare professionals for discussions regarding the benefits and limitations of Merck products. Vendor and MMCAP agree that Merck Vaccine Specialists and other field representatives will continue to call on and communicate with physicians, directors of pharmacy and other appropriate member personnel of MMCAP and MMCAP Participating Facilities to provide Product related information for the Vendor Products subject to this contract.

Should MMCAP or an MMCAP Participating Facility, or one of its agents or employees, wish to use, discuss, or promote one or more of Vendor's Products in a fashion inconsistent with or contrary to the said Prescribing Information for those Products ("Out of Label Discussion"), such Out of Label Discussion shall be its independent act, and in doing so it shall be acting outside of this contract and not as Vendor's agent or representative.

4 Assignment, Amendments, Waiver, and Contract Complete

4.1 Assignment. Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement.

4.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed by both parties. Vendor agrees to use the amendment process set forth in Article 2.7 above.

4.3 Waiver. If MMCAP or Vendor fails to enforce any provision of this Contract, that failure does not waive the provision or such party's right to enforce that provision or any other provision of this Contract.

4.4 Contract Complete. This contract, including all Attachments hereto, constitutes the entire contract and understanding of the parties, subject to subsequent amendments pursuant to Section 4.2, and supersedes all prior agreements, written or oral, between the parties.

5 Liability. Each party will be responsible for their own acts and behavior and the results thereof.

6 State Audits

Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract. Vendor shall have the right, upon written notice, to review and audit data and other documentation of MMCAP and any MMCAP Participating Facility, as necessary to verify MMCAP's or such MMCAP Participating Facility's compliance with its obligations under this contract. An independent third-party auditor may, at Vendor's sole discretion, conduct such review and audit, provided that such auditor shall agree to maintain the confidentiality of MMCAP and each MMCAP Participating Facility's confidential data and documentation. Vendor's ability to audit shall be limited to once in any consecutive twelve (12) month period. The terms of this audit section shall survive termination of this contract for a period of one year.

7 Government Data Practices and Intellectual Property.

7.1 Government Data Practices. The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this clause, the Vendor must immediately notify MMCAP and provide a reasonable opportunity to object to such request. MMCAP will give the Vendor instructions concerning the release of the data to the requesting party before the data is released.

7.2. Intellectual Property Indemnification. Deleted in its entirety.

8 Publicity and Endorsement.

8.1 Publicity. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract. Merck will not use the MMCAP logo for publicity without MMCAP consent.

8.2 Endorsement. The Vendor must not claim that MMCAP endorses its Products or services.

9 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Except to the extent that the provisions of this Contract are clearly inconsistent therewith, this Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC except when to do so is unreasonable. In the event of any dispute relating to the terms, conditions or performance of any obligation of this Agreement, MMCAP, each MMCAP Participating Facility and Vendor shall first engage in good faith negotiations, including the involvement of senior management, before instituting any litigation. Absent extenuating circumstances that require earlier legal action in order to avoid irreparable harm or substantial damages, such negotiations shall proceed for a minimum of 30 days.

10 Antitrust. Deleted in its entirety.

11 Force Majeure

Neither party to this Contract will be held responsible for delay or default caused by acts of God, including but not limited to: fire, flood, earthquake, storm, epidemic, national emergency, acts of terrorism fire, riot, natural disaster, war, raw material shortage, or labor dispute or acts of God.

12 Severability

If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

13 Default and Remedies

A material breach of any term or conditions of this contract constitutes cause to declare the Contract or any order under this Contract in default:

Written notice of default, and a reasonable opportunity to cure (not to be less than 30 days), must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for damages.

If the default remains after the opportunity for cure, the nondefaulting party may:

- (a) Exercise any remedy provided by law or equity; or
- (b) Terminate the Contract or any portion thereof, including any orders issued against the Contract.

14 Certification.

Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practice Regulations (CGMPR's) (Practices)" (cGMP) (as codified in 21 C.F.R. Parts 210§ 201-211) will be the

MMCAP Contract Number: MMS15147

standard to be applied for manufacturing, processing and packaging of drugs, chemicals, biologicals, and reagents.the current United States Food, Drug, and Cosmetic Act.

Merck Products are all guaranteed to be true to label and to conform fully to the requirements of applicable federal laws and regulations at the time of shipment.

Because Merck cannot control the conditions under which drugs are administered, its guaranty is only pharmaceutical in character, relating solely to the identity and quality of ingredients used in the Products at the time they are manufactured and the care and skill exercised in their manufacture.

15 Data Disclosure

In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota and other MMCAP Participating Facility obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

16 Insurance Requirements

Vendor is self-insured.

17 Laws and Regulations. Both Parties shall comply with all applicable state and federal laws that apply to its performance under this Contract, including Minnesota Statutes Section 181.59, as applicable.

18 Confidential Information. During the term of this Contract and for a period of five (5) years following the date of expiration or termination of this Contract, MMCAP agrees to keep the pricing of this Agreement non-public, except when such disclosure is required by applicable law. If the situation arises where disclosure is requested, notification of a request to release would be sent immediately to the Vendor's Authorized Representative. Vendor will acknowledge receipt of the notification within five business days or MMCAP will be free to release the information. Upon notification to MMCAP, Vendor, at its own expense, may pursue an action to enjoin the disclosure of information considered by the Vendor to be "confidential information."

Without prior notice, MMCAP may release the following information:

- a. Contract Release and contract documents to MMCAP Members and Participating Facilities;
- b. Contract pricing to MMCAP's Contracted Distributors for use in the Contracted Distributor's ordering, invoicing, and reporting systems;
- c. Contract pricing to other third parties under non-disclosure agreement or contract with MMCAP to perform specific tasks such as auditing and data analysis; and
- d. Member State Attorneys General or auditors requiring contract or pricing data to perform their duties

19 Exclusion.

MMCAP represents and warrants that prior to the effective date of this Agreement, it has screened itself, and its officers and directors against the Exclusions Lists and that it has informed Vendor if it, or any of its officers or directors has been in Violation. After the execution of the Agreement, MMCAP shall notify Vendor in writing immediately if any such Violation occurs or comes to its attention. Vendor shall also have the right, in its sole discretion, to terminate this Agreement immediately in the event of any such Violation.

Vendor represents and warrants that prior to the effective date of this Agreement, it has screened itself, and its officers and directors against the Exclusions Lists and that it has informed MMCAP if it, or any of its officers or directors has been in Violation. After the execution of the Agreement, Vendor shall notify MMCAP in writing immediately if any such Violation occurs or comes to its attention. MMCAP shall also have the right, in its sole discretion, to terminate this Agreement immediately in the event of any such Violation.

For the purpose of this Section the term Violation shall mean that either MMCAP, or any of its officers or directors; or Vendor, or any of its officers or directors has been: (1) convicted of any of the felonies identified among the exclusion authorities listed on the U.S. Department of Health and Human Services, Office of Inspector General (OIG) website, including 42 U.S.C. 1320a-7(a) (<http://oig.hhs.gov/fraud/exclusions/authorities.asp>); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (<http://oig.hhs.gov/fraud/exclusions/listofexcluded.html>) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (<http://www.epls.gov>); or (3) listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or non-procurement programs, including under 21 U.S.C. 335a (http://www.fda.gov/ora/compliance_ref/debar/) (each of (1), (2) and (3) collectively the "Exclusions Lists").

20 Authority. MMCAP represents and warrants that it has the full power and authority to act on behalf of MMCAP Participating Facilities for purposes of this Agreement and that, in order to purchase Merck Products pursuant to this Agreement, each MMCAP Participating Facility is contractually obligated to MMCAP to comply with terms and conditions of this Agreement and MMCAP will enforce such contractual obligations.

21 Duty To Warn.

- 1) MMCAP Participating Facilities must (a) take all appropriate steps to assure that all Vendor vaccine Products purchased by MMCAP Participating Facilities pursuant to this contract shall be administered to each patient on the basis of an individualized medical judgment by a physician, or (b) take all appropriate steps to provide to such patient (or to patient's parent or guardian) meaningful warnings relating the risks and benefits of vaccination, in form and language understandable to such patient, parent or guardian.
- 2) If any suit asserted against Merck by a third party is based in whole or in part on a claim for failure to properly discharge the responsibilities assumed by the MMCAP Participating Facility under paragraph 1 above, the MMCAP Participating Facility shall upon prompt written notice of such claim or action, either (a) seek to appear in each suit and defend on such issue or (b) not contest, in subsequent litigation brought by Merck against the MMCAP Participating Facility any factual determination made on that issue in the earlier litigation.
- 3) In the event of the MMCAP Participating Facility's breach of, or failure to carry out, its responsibilities under paragraph 1 above, any measure of resulting damages to Merck shall include, but need not be limited to, damages (including money judgments, reasonable attorneys' fees, and other cost) sustained in connection with claims against Merck for personal injuries caused by such breach or failure. This provision shall not limit any other right of Merck to obtain damages or other relief for any breach of this contract or for the settlement of any dispute arising under any award or agreement covered by this contract.
- 4) It is the policy of Merck to ship vaccine only to those persons or entities who are licensed by law to accept such shipments. In order to purchase any Merck vaccine Product under this Agreement an MMCAP Participating Facility must be authorized by state law to accept shipment of vaccines or must have designated such a person or entity to accept the shipment of vaccine product covered by this Agreement.

22 Product Position.

As a condition of receiving discounts for an individual Merck Product offered under this Agreement, MMCAP shall agree not to, during the term of this Contract, place the individual Merck Product in a disadvantageous position (disadvantaging activities).

Nothing in this Agreement is intended to restrict, limit or preclude an individual physician from making an independent prescribing decision based on such physician's medical judgment in the best interest of his/her patient's care. Furthermore, neither party shall take any action to restrict, limit or preclude a physician from exercising the physician's independent prescribing authority in the best interest of his/her patient care as determined by the physician in consultation with his/her patient, based on the physician's independent medical

judgment.

Disadvantaging activities would constitute placing any Product in a disadvantageous position including but not limited to:

- Establishing a formulary that excludes an individual Product, if the formulary includes a therapeutic category or categories in which such product competes.

If MMCAP engages in such disadvantaging activities as described above, Merck shall have the option of renegotiating the prices of such Product(s) with MMCAP. If after 60 days, no agreement is reached, Merck shall have the option of (1) immediately changing the prices of such Product to current Merck catalog prices, or (2) immediately deleting such individual Product from this Agreement.

23 Notices.

All notices shall be sent by registered or certified mail, overnight delivery with tracking capability, facsimile with confirmed receipt to the individual listed below (or such other address as a party may from time to time designate in writing), or electronic mail to mmcap.contracts@state.mn.us and shall be deemed to have been given on the date of mailing by registered or certified mail, overnight delivery or facsimile or electronic mail. All administrative correspondence (membership lists, prime vendor lists, etc.) shall be sent to:

For Merck:

Kevin Agnew
Contract Manager
Customer Contract Management
P.O. Box 4
WP 97B-366
West Point, PA 19486-0004
(215) 652-4176
Kevin.Agnew@merck.com

For MMCAP:

MMCAP Contract Manager
Minnesota Multistate Contracting
Alliance for Pharmacy
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
(651) 201-2420
Mmcap.contracts@state.mn.us

24 Counterparts.

This contract may be executed in counterparts, all of which, taken together, shall form a single contract.

25 Overpayments and Undercharges.

During the term of this Contract and for a period of three (3) years following the date of expiration or termination of this Contract, if Vendor reasonably determines as a result of an inspection or audit of MMCAP and/or a Participating Facility, or through other information, that all or any part of the pricing on Products previously granted by Vendor to MMCAP and/or the Participating Facility is inconsistent with the terms and conditions of this Agreement, the Participating Facility shall pay the undercharge to Vendor no later than thirty (30) days after Vendor notifies MMCAP in writing of the undercharge. In the event Vendor has overcharged the MMCAP Participating Facility, the Vendor will credit the MMCAP Participating Facility within thirty (30) days of the discovery. MMCAP agrees to help facilitate the recovery of any overpayment from Participating Facilities.

26 Affirmative action requirements for contracts in excess of \$100,000 and if Vendor has more than 40 full-time employees in Minnesota or its principal place of business. The State of Minnesota intends to carry out its responsibility for requiring affirmative action by its vendors.

26.1 Covered contracts and Vendors. If the Contract exceeds \$100,000 and Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then Vendor must comply with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules 5000.3400-5000.3600. If Vendor is covered by Minnesota Statutes Section 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, it must certify that it is in compliance with federal affirmative action requirements.

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26.2 Minnesota Statutes Section 363A.36. Minnesota Statutes Section 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

26.3 Minnesota Rules 5000.3400-5000.3600.

(a) *General.* Minnesota Rules 5000.3400-5000.3600 implements Minnesota Statutes Section 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules 5000.3400-5000.3600 including, but not limited to, Minnesota Rules 5000.3420-5000.3500 and 5000.3552-5000.3559.

(b) *Disabled Workers.* Vendor must comply with the following affirmative action requirements for disabled workers.

(1) Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of Vendor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Vendor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

(c) *Consequences.* The consequences for Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State of Minnesota.

(d) *Certification.* Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

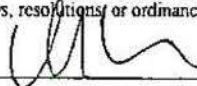
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MMCAP Contract Number: MMS15147

27 Cancellation. MMCAP or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment, determined in a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date. MMCAP or Vendor may terminate this contract immediately upon a determination or opinion by any court or any governmental agency that the arrangements and transactions required or contemplated under the contract constitute a violation of any law or regulation.

1. MERCK SHARP & DOHME CORP.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions or ordinances.

By: 
Title: Michele Taylor, Director- Merck Vaccines
Date: 6-18-15

2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd 3

By: Sandra Christensen
Title: Pharmacy Analyst
Date: 6-24-15

3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: _____
Title: _____
Date: _____
By: Dao Hong PharmD, MBA
Title: Pharmacist Senior
Date: June 24, 2015

Merck Sharp & Dohme, Corp. Contract MMS15147

Amendments 1 - 2
are not posted for
viewing

AMENDMENT NO. 2 TO MMCAP CONTRACT NO. MMS15147 (00129233)

<http://www.mmcadmin.state.mn.us/MMCAP/Contracts/Default.aspx>

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Merck Sharp & Dohme Corp., a subsidiary of Merck & Co. Inc., 770 Sumneytown Pike, P.O. Box 4, WP97-B366, West Point, PA 19486-0004 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS15147 (00129233) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

Revise the language in Section 2.4 Pricing (1) Definitions (Discount Guarantee) effective April 1st, 2016 provided this Amendment No. 2 is fully executed on or before such date.

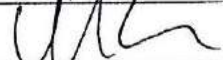

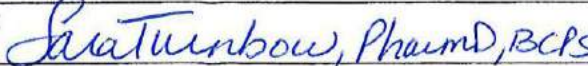
Current Contract Language:

'Discount Guarantee(s)' means that when the Merck catalog price changes for a Product covered by this contract, the price of that Product will change, so the MMCAP Participating Facilities will receive the same percent discount off the new Merck catalog price, subject to the Vendor's right to change the discount percentage at the start of each Contract Year during the term of the Agreement, with thirty (30) days' prior written notice. For the **first thirty (30) calendar days** following a Merck catalog price increase, MMCAP Participating Facilities will be entitled to purchase the Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Participating Facility will be charged the prior (pre-increase) catalog price.

New Contract Language:

'Discount Guarantee(s)' means that when the Merck catalog price changes for a Product covered by this contract, the price of that Product will change, so the MMCAP Participating Facilities will receive the same percent discount off the new Merck catalog price, subject to the Vendor's right to change the discount percentage at the start of each Contract Year during the term of the Agreement, with thirty (30) days' prior written notice. For the **first ninety (90) calendar days** following a Merck catalog price increase, MMCAP Participating Facilities will be entitled to purchase the Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Participating Facility will be charged the prior (pre-increase) catalog price.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

<p>1. MERCK SHARP & DOHME, CORP.</p> <p>The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.</p>	<p>2. STATE OF MINNESOTA FOR MMCAP</p> <p>In accordance with Minn. Stat § 16C.03, subd. 3</p>
<p>By: </p>	<p>By: </p>
<p>Title: Michele Taylor, Director</p> <p>Customer Marketing – Merck Vaccines</p>	<p>Title:</p> <p>SPA-P</p>
<p>Date: 3-30-16</p>	<p>Date: 3/30/2016</p>
	<p>3. COMMISSIONER OF ADMINISTRATION</p> <p>In accordance with Minn. Stat § 16C.05, subd. 2</p>
	<p>By: </p>
	<p>Title: Pharmacist Sr.</p>
	<p>Date: 3-30-16</p>

AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS15147 (00129233)

THIS AMENDMENT is by and between the State of Minnesota acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Merck Sharp & Dohme Corp. (Vaccine Division), P.O. Box 4, WP97-B366, West Point, PA 19486 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS15147 (00129233) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

The State of Minnesota recently enacted legislation requiring Israel Anti-discrimination Language in all contracts valued over \$50,000. MMCAP and the Vendor are willing to amend the Original Contract as stated below

Contract Amendment

(MJ)

Revision 1: Effective when signed, Article 2.9 Administrative Fee, of the Original Contract, is amended to add the administrative fee remittance address to:

Financial Management & Reporting - MMCAP
50 Sherburne Avenue, Suite 309
St. Paul, MN 55155

Revision 2: Effective when fully signed, the following new contract article will be added to the Original Contract:

28 Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. MERCK SHARP & DOHME CORP.
(VACCINE DIVISION)**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Michele Taylor
Title: Executive Director
Date: 1-5-18

2. STATE OF MINNESOTA FOR MMCAP
In accordance with Minn. Stat. § 16C.03, subd. 3

By: Duke A. L. Swonds
Title: SPA Coordinator
Date: 1-5-2018

3. COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. § 16C.05, subd. 2

By: _____
Title: _____
Date: _____

By: Saratunboy Pham, D, BCPS
Title: Pharmacist Sr.
Date: 1-5-18

AMENDMENT 5 TO MMCAP CONTRACT NO. MMS15147

THIS AMENDMENT 5 ("Amendment") is entered into as of July 1, 2019 or the date MMCAP obtains all required signatures within this document, whichever is later ("Effective Date") by and between the State of Minnesota acting through its Commissioner of Administration ("Minnesota") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Merck Sharp & Dohme Corp. (Vaccine Division), a corporation with an address of P.O. Box 4, WP97-B366, West Point, Pennsylvania 19486 ("Vendor").

RECITALS

WHEREAS, MMCAP and Vendor entered into a Contract MMS15147 on July 1, 2015 ("Original Contract");

WHEREAS, MMCAP and Vendor amended certain terms and conditions of the Original Contract by the way of previous legal agreements between MMCAP and Vendor, collectively the Original Contract and the previous legal agreements will be referred to as the "Agreement";

WHEREAS, MMCAP and Vendor have agreed to certain changes in the terms and conditions set forth in the Agreement and have agreed to amend the Agreement to reflect said changes;

WHEREAS, besides the terms and conditions of the Original Contract amended in this Amendment, the Agreement remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Original Contract shall be amended as follows:

Capitalized Terms; Definitions; Conditions. The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment which are defined in the Agreement will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP.

Modifications

Revision 1: Upon the Effective Date, any reference to the Expiration Date of June 30, 2019 appearing in the Agreement is deleted and replaced with June 30, 2020. The Agreement may be extended upon mutual agreement of both parties.

Except as herein amended, the provisions of the Agreement between the parties are hereby expressly reaffirmed and remain in full force and effect.

VENDOR: Merck Sharp & Dohme Corp. (Vaccine Division)

The Vendor certifies that the appropriate person(s) have executed this Amendment on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: Michelle Taylor
Signature: [Signature]
Title: Executive Director
Date: 3-7-19

STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. 16C.03, Subd. 3

Name: Sara Turnbow
Signature: [Signature]
Date: 3-12-19

COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. 16C, Subd. 2

Name: Jennifer VanderPlast
Signature: [Signature]
Date: 3/13/2019

THIS AMENDMENT NO. 6 ("**Amendment**") is entered into on the date all required signatures are obtained for this document and is by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of the MMCAP Infuse ("**MMCAP Infuse**") and Merck Sharpe & Dohme Corporation, a corporation with an address of P.O Box 4, WP97-B366, West Point, Pennsylvania 19486 ("**Vendor**").

RECITALS

WHEREAS, MMCAP Infuse and Vendor entered into MMS15147 on July 1, 2015 ("**Original Contract**");

WHEREAS, MMCAP Infuse and Vendor amended certain terms and conditions of the Original Contract by the way of Amendment 1 on August 1, 2015; Amendment 3 on April 1, 2016; Amendment 4 on January 5, 2018; and Amendment 5 on July 1, 2019; together, Original Contract and Amendment 1, 2, 4, and 5 will be referred to as "**Agreement**";

WHEREAS, MMCAP Infuse and Vendor have agreed to certain changes in the terms and conditions set forth in the Agreement and have agreed to amend the Agreement to reflect said changes;

WHEREAS, besides the terms and conditions of the Agreement amended in this Amendment, the Agreement remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Agreement shall be amended as follows:

Capitalized Terms; Definitions; Conditions. The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment that are defined in the Agreement will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted, or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP Infuse.

In this Amendment, changes to pre-existing Agreement language will use ~~strike through~~ for deletions and underlining for insertions.

Clause Modifications

Revision 1: When fully executed, Section 2.1.1 of the Agreement will be amended as follows:

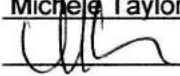
2.1.1 The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP-Contracted Distributors for use by MMCAP Participating Facilities, unless provided according to the exception found in Article 2.2. The current MMCAP-Contracted Distributors are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC, ~~FFF Enterprises, Inc., ASD Specialty Healthcare, LLC, and McKesson Medical-Surgical Government Solutions, LLC.~~

Except as herein amended, the provisions of the Agreement between the parties are hereby expressly reaffirmed and remain in full force and effect.

[End of Amendment; Signature Page Follows]


VENDOR: Merck Sharpe & Dohme Corporation

The Vendor certified that the appropriate person(s) have executed this Amendment on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: Michele Taylor
Signature: 
Title: Executive Director
Date: 4-12-20


**STATE OF MINNESOTA FOR MMCAP
INFUSE**

In accordance with Minn. Stat. § 16C.03, subd. 3

Name: James Babbitt
Name: DocuSigned by:
Signature: 
Date: 4/20/2020

COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

Name: Jennifer Vanderplaats
Name: DocuSigned by:
Signature: 
Date: 4/20/2020